

March 27, 2008

Mr. Daniel J. Kramer
8041 Scotts Store Rd.
Greenwood, DE 19950

**RE: Freedom of Information Act Complaint Against
Woodbridge School District**

Dear Mr. Kramer:

On March 5, 2008 the Delaware Department of Justice (DDOJ) received your letter of that date alleging that the Woodbridge School District (the "District") violated the Freedom of Information Act (FOIA) regarding the award of a contract to build a pole building. On March 6, 2008 we sent that complaint to the District and requested their response by March 16, 2008. On March 12, 2008 we received and forwarded to the District your February 19, 2008 letter alleging that the District did not give a reason for adding the pole building bid results to the agenda originally posted on February 5, 2008. We received the Town's response on March 17, 2008.

The Relevant Facts

According to your complaint, a January 16, 2008 email message from the District's Supervisor of Administrator Services stated that the pole building contract was awarded at the January 15, 2008 board meeting, despite the fact that the pole building was not on the agenda for that meeting. In response to your complaint, the District asserted that the Supervisor of Administrative Services made a mistake in his January 16

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email. It further provided us with the minutes for the January 15 meeting. According to the minutes, there was neither discussion nor vote concerning the pole building.

The second issue you raise is that the agenda posted on February 5 for the February 12 meeting did not list the pole building matter, and when the District added the pole building to the agenda on February 7, it did so without explanation for the delay. The District points out that the February 7 agenda stated: "Pole building bid results are being added to this agenda...due to the necessity of Board Action after the original posting." In its letter of February 25, 2008 to Jim Griffin, Esquire, on which you were copied, the District noted that "[o]n Wednesday February 6, 2008, the district became aware the pole building placement could occur; with a slight adjustment, as planned at the farm location. The matter was in question due to the under ground storm drainage lines and their potential ability to limit the building location."

Relevant Statutes

FOIA provides that "[a]ll public bodies shall give public notice of their regular meetings...at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time...." 29 *Del. C.* § 10004(e)(2). "When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting, and the reasons for the delay in posting shall be briefly set forth on the agenda." 29 *Del. C.* § 10004(e)(5).

Analysis

Your contention that the pole building bid had been awarded at the January 15, 2008 meeting was mistaken. The minutes of that meeting make clear that the District neither discussed nor voted on the pole building. Moreover, your claim that the District failed to give a reason for the late addition of the pole building to the agenda for the February 12 meeting is incorrect; the agenda posted on February 7 did provide a brief reason for the delay.

We have previously determined that FOIA “requires only a reason, not a specific detailed factual basis, why the seven-day requirement could not be met.” *Att’y Gen. Op.* 02-IB22, at 6 (September 13, 2002) (quoting *Att’y Gen. Op.* 096-IB15 (May 10, 1996)). In this case, the District gave as its reason the necessity for Board action that arose after the original posting, which sufficiently explains the delay. We are satisfied that the District did not act in deliberate disregard of the seven day posting requirement.

We have stated in past opinions that we would also look for a reason why the delayed agenda item could not have been postponed in order to give the public full notice. *Att’y Gen. Op.* 05-IB15, at 6 (June 20, 2005). While it is not clear from the record that the pole building contract needed to be approved on February 12, and not at a later meeting after full notice, the pole building contract was, in fact, re-noticed for the March 4, 2008 meeting, at which the contract was awarded. In other words, the District has remedied any defect in FOIA compliance.

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Conclusion

For the reasons stated herein, it is determined that the Woodbridge School District did not award the pole building contract without public notice, in violation of FOIA, nor did the District violate FOIA by failing to state the reason for the delay in posting the pole building bid results to the agenda for the February 12, 2008 board meeting. To the extent that FOIA may require that a public body postpone an agenda item that can be deferred, that was done in this case by re-noticing the pole building contract for the March 4, 2008 meeting, and no further remediation is required.

Very truly yours,

Judy Oken Hodas
Deputy Attorney General

APPROVED

Jennifer D. Oliva
Deputy State Solicitor

cc: Kevin E. Carson, Ed.D., Superintendant